In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO MOTION BY THE STATE OF LOUISIANA TO TAKE DEPOSITIONS

The State of Louisiana has moved the Court for an order permitting it to take depositions of fourteen persons "for the purpose of discovery and for use as evidence in this case." The United States opposes the entry of such an order.

The prayer of the complaint is for a judgment declaring the United States rather than the State to be entitled to the submerged lands and resources lying more than three miles from the low-water mark and outer limit of inland waters on the coast of Louisiana. This Court by its decision in *United States* v. *Louisiana,* 339 U. S. 699, held the United States to be entitled to all of the submerged lands and resources seaward of the low-water mark and outer limit of inland waters. The United States

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remains so entitled, except to the extent that it has since granted such rights to the State by the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315. The grant made by that Act was limited to lands within the State boundary, three miles from the coast or as previously approved by Congress or as it existed when the State entered the Union, but not more than three leagues from the coast in any event. Thus the extent of the grant made to each State depends on the location of the boundary, as there defined, of the particular State. That location must be determined from the applicable circumstances in each case. The boundary of the State of Louisiana cannot extend farther seaward than the national boundary; the national boundary extends seaward only three miles from the coast of Louisiana. The extent of such national boundary has been conclusively determined by the political branches of the National Government and is subject to judicial notice. Thus, the right of the United States to the judgment it seeks depends on propositions of law and matters subject to judicial notice, and the taking of testimony is not necessary or appropriate. Subsidiary factual issues may arise regarding practical application of the judgment to the terrain, but what those particular issues will be cannot be known until the judgment is entered. See the United States' Motion for Judgment and Statement with Respect to Motion, filed simultaneously herewith.

Accordingly, the United States submits that the motion to take depositions should be denied, or at least held in abeyance pending ruling on the Gov-

ernment's motion for judgment. There is no showing that the State will be prejudiced thereby. Twelve of the persons sought to be interrogated are officials or employees of the State, its agencies or its political subdivisions, and the other two are former State officials. It is not intimated that any of them is uncooperative or that any other reason exists why the State needs their depositions for purposes of discovery. There is no showing that any of the proposed witnesses has peculiar (or, indeed, any) knowledge of any stated subject, material or otherwise, is elderly or in poor health or about to leave the jurisdiction of this Court, or that any other reason exists why their depositions will be needed for use as evidence in this case.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

DECEMBER 1956.

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